

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1488 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORE @ UYO BHANABHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

Ms. Banna Dutta for MS KD PARMAR for Petitioner
Mr. Samir Dave, A.G.P. Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/10/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta on behalf
of the petitioner and learned A.G.P. Mr. Samir Dave on
behalf of the respondents nos.1, 2 and 3.

1. The order of detention dated 22-12-1998 passed by
the respondent no.1-Police Commissioner, Rajkot City,
against the petitioner in exercise of powers conferred
under Section 3(1) of the Gujarat Prevention of
Antisocial Activities Act, 1985("PASA" for short) is
challenged in the present petition under Article 226 of
the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" produced at Annexure "C" indicates inter alia that four criminal cases in respect to offences made punishable under the Indian Penal Code are registered against the petitioner at Rajkot City "B" Division Police Station on 4-1-1997, 19-2-1998, 29-8-1998 and 18-12-1998. That out of the said four cases, the first three cases are pending for trial in Court while the case registered vide CR no.843/98 is pending investigation. Over and above that, the grounds of detention indicate that two witnesses on assurance of anonymity have supplied information against the criminal activity of the petitioner vide statements dated 20-12-1998 and 21-12-1998 respectively.

3. That on the basis of the aforesaid material, the respondent no.1 as detaining authority has concluded that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of "PASA". That anonymous witnesses have expressed their fear to the effect that if their identity is disclosed they might suffer harm from the petitioner, and as such, the respondent no.1 has claimed privilege under Section 9(2) of "PASA" in respect to said two witnesses. The respondent no.1 has also concluded that resort to enforcement of general law being insufficient to prevent the petitioner from continuing his nefarious antisocial activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is submitted on behalf of the petitioner that alongwith the grounds of detention, documents annexed as per pages 1 to 82 are supplied to the petitioner. That thereafter on 29-7-1999, the representation has been made to the respondent no.2-State on behalf of the petitioner and documents, namely, proposal of detention as well as statements recorded under Section 161 of witnesses, injury certificate, Panchnama of scene of offence and recovery Panchnama were called for to make effective representation. That the petitioner has amended the petition on 6-9-1999 and had added additional grounds 16A, 16B and 16C and contended that the respondents have not considered the representation and having failed to provide the documents claimed through the said representation has prevented the petitioner from making effective representation which amounts to violation of fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution and renders the continued detention of the petitioner illegal. It is also contended that the documents supplied to the petitioner disclose that the

Sponsoring Authority has issued a certificate dated 12-12-1998 addressed to the respondent no.1-Commissioner of Police, Rajkot City certifying a fact that charge-sheet in respect to criminal case registered against the petitioner vide CR no.843/98 is ready and shall be filed within a very short period. That the detaining authority appears to have formulated the grounds of detention on 22-12-1998 after verification of statement given by anonymous witnesses on the very day. That the detaining authority appears to have failed to peruse the material collected by the Sponsoring Authority for filing charge-sheet against the petitioner in respect to said CR no.843/98, and as such, there is non application of mind on the part of the detaining authority to the vital material which could have tilted the mind of the detaining authority otherwise. It is also submitted that the petitioner had moved Misc. Criminal Application no.1527/98 before the Court of learned Sessions Judge in respect to CR no.843/98. That the Sponsoring Authority appears to have failed to place said application and any order passed on the same before the detaining authority, which has also affected the fundamental right of the petitioner and has rendered the impugned order bad in law.

5. It is noteworthy that though rule is served none of the respondents have filed any affidavit. Not only that but also after amendment of the petition raising additional grounds vide paragraphs 16A, 16B and 16C on 6-9-1999, no attempt has been made on behalf of the respondents to explain or rebut the contentions raised on behalf of the petitioner by filing affidavit. Learned A.G.P. Mr. Samir Dave has made an attempt to salvage the issue by stating that as per the noting made in the original file, the representation made by the petitioner dated 29-7-1999 was rejected after due consideration on 5-8-1999. He further submitted that the claim of documents made in the said representation being vague no specific document could be supplied to the petitioner. The submission urged by Mr. Dave cannot be of any assistance to the respondents because it is an undisputed fact that the charge-sheet in respect to CR no.843/98 was not filed till the date of passing of impugned order. That thereby the additional documents like statement of witnesses recorded under Section 161, injury certificate and Panchnama must be with the Sponsoring Authority. That concerned authority of the State Government as well as the detaining authority have failed to apply their mind to the said representation and have also failed to supply the said documents which amounts to breach of constitutional imperative under Article 22(5) rendering

the continued detention of the petitioner illegal. It is also required to be noted that by not filing any affidavit, the respondents have failed to disclose whether any procedure has been followed after raising additional contentions, by the concerned authority, and as such, in the absence of any reasonable explanation , it is required to be held that on account of inaction on the part of the respondents, the petitioner could not make effective representation which has violated his fundamental right under Article 22(5) of the Constitution and has rendered the continued detention of the petitioner illegal.

6. As the petition succeeds on the above stated ground alone, it is not necessary to consider the other contentions raised on behalf of the petitioner.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 22-12-1998 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Kishore alias Uyo Bhanabhai Makwana is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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